

EXHIBIT 38

FILED UNDER SEAL

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FAIR ISAAC CORPORATION,

Plaintiff,

v. Court File No. 16-cv-1054 (WMW/DTS)

FEDERAL INSURANCE COMPANY,
an Indiana corporation, and ACE
AMERICAN INSURANCE COMPANY,
a Pennsylvania corporation,

Defendants.

VIDEO DEPOSITION OF

THOMAS CARRETTA

MARCH 22, 2019

9:31 A.M.

CONFIDENTIAL

ATTORNEYS' EYES ONLY

1 VIDEO DEPOSITION of THOMAS CARRETTA,
2 taken pursuant to Notice and agreement of and
3 between counsel at the offices of Fredrikson &
4 Byron, P.A., 200 South Sixth Street, Suite 4000,
5 Minneapolis, Minnesota, at approximately 9:31
6 a.m. on March 22, 2019, before Jodi M.
7 Weisenburger, Notary Public, County of Hennepin,
8 State of Minnesota, to be used in the
9 above-entitled cause.

10
11 A P P E A R A N C E S :
12

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ALSO PRESENT: Jim Woodward.
VIDEOGRAPHER: Kurt Glenn

<p>1 our clients all have the same kind of clauses in 2 our agreement. It's a typical thing in 3 everybody's contracts because it defines the 4 boundaries of what's going to be done. 5 People have conversations all the time 6 about how can we potentially solve this and how do 7 we solve this, but you can't solve it until you 8 actually agree to go solve the problem. 9 Q. So in terms of knowledge, we were talking about 10 what FICO's knowledge is of these uses that FICO 11 alleges were outside of the license, and let me 12 ask the question. Do you understand now today 13 that Mike Sawyer was aware of use in the United 14 Kingdom during the term of the license? 15 MS. KLIEBENSTEIN: Objection, calls for 16 speculation. 17 THE WITNESS: FICO's knowledge of use is 18 what's in our contracts, and we reference back to 19 those contracts because it doesn't -- what happens 20 is it doesn't permeate the entity, the FICO 21 entity, until we have contracts because that 22 triggers all kinds of things. So, for instance, 23 there might be software license and then that 24 implicates having maintenance terms, so the 25 maintenance organization is advised of it, the</p> <p style="text-align: right;">Page 44</p>	<p>1 I can't seem to get an answer to it because 2 there's just circular references to agreements. 3 My question then was -- because I can't 4 get an answer to that, I said, did Mike Sawyer 5 know, and -- 6 MS. KLIEBENSTEIN: And I just wanted the last 7 question reread, that's all, so he could answer 8 it. 9 MS. JANUS: Okay. 10 (The question was read back by the court 11 reporter.) 12 THE WITNESS: What's "it"? 13 BY MS. JANUS: 14 Q. Mike Sawyer's knowledge. 15 A. Mike Sawyer's knowledge is dependent on the 16 circumstances; in other words, if he's out 17 promoting something, we wouldn't know that 18 necessarily unless he entered into the sales force 19 that, okay, I'm thinking of an opportunity here. 20 What's relevant is Mike knows that he 21 can't authorize the distribution of software 22 without a contract. 23 Q. Can you answer the question I asked? 24 A. Can I hear the question again? 25 (The question was read back by the court</p> <p style="text-align: right;">Page 46</p>
<p>1 accounting people are advised of it, and so that 2 knowledge then becomes spread. And people like 3 Mike Sawyer or Russ Schreiber know they can't sign 4 contracts. It has to follow the contract process 5 so that we can become fully aware that there are 6 things going on. 7 So do I know on behalf of FICO that Mike 8 Sawyer knew something about the United Kingdom? 9 No. 10 BY MS. JANUS: 11 Q. So as you -- your testimony is that Mike Sawyer 12 did not know about Chubb's use in the United 13 Kingdom? 14 A. I don't know what Mike Sawyer knows. 15 Q. Is it relevant to you in determining what FICO 16 knows about use? 17 A. Again, our process -- 18 Q. Answer the question I asked. I'm entitled to an 19 answer to the question I asked. 20 A. Yeah, and I'm answering the question. 21 MS. KLIEBENSTEIN: Could you repeat that 22 question for me? 23 BY MS. JANUS: 24 Q. I'm simply -- I'm trying to understand what FICO's 25 knowledge of use was. That's what the topic is.</p> <p style="text-align: right;">Page 45</p>	<p>1 reporter.) 2 THE WITNESS: And my answer was we look to 3 the records. Mike doesn't have authority, none of 4 the salespeople have authority to say go run off 5 and do something different, and that's because 6 we're honoring not only our policies but because 7 the contract says you need to -- Chubb needs to 8 sign off before they want to be responsible for 9 anything. 10 So if Mike has sales puffery or something 11 like that saying, hey, I think we might be able to 12 solve the problem this way or the other, that's 13 not hugely relevant, no. 14 BY MS. JANUS: 15 Q. Is Mike Sawyer's knowledge of the use of Blaze by 16 Chubb in Europe relevant to you in determining 17 FICO's knowledge of the use of Blaze by Chubb in 18 Europe? 19 A. No, it's not binding on us. 20 Q. What if Mike Sawyer consulted with you about the 21 use of Blaze in Europe? 22 A. If Mike had knowledge of some facts or said X 23 company in Europe wants to use the software, Mike 24 would follow the process of asking -- you know, 25 first following through the sales process to enter</p> <p style="text-align: right;">Page 47</p>

<p>1 Mr. Schreiber is not one of those who has the 2 authority to bind the company. That's limited to 3 a very small group of people.</p> <p>4 And this process would have flowed 5 through to surface, and obviously it never 6 surfaced because I don't believe there's any 7 contracts signed for any of this stuff in the 8 existing agreements that we have.</p> <p>9 BY MS. JANUS:</p> <p>10 Q. When you say that this isn't a very clear 11 exchange, with respect to whether the enterprise 12 license allows the use of Blaze in Europe, would 13 you say it's a clear exchange?</p> <p>14 A. No.</p> <p>15 Q. What is unclear about it?</p> <p>16 A. Mr. Schreiber says, "You can pull up the contracts 17 in pramata for precise answers." He says it was 18 done years ago, so he obviously hasn't looked at 19 anything, so that tells me he hasn't looked at 20 anything, he's just guessing.</p> <p>21 Q. Anything else unclear about the exchange?</p> <p>22 A. Yeah, I'm not even sure what he's talking about 23 for regional or -- regional or -- he says, "I'd 24 sell them regional." I don't know what that 25 means.</p> <p style="text-align: right;">Page 104</p>	<p>1 Q. So this is just a few days after that?</p> <p>2 A. Like five days later.</p> <p>3 Q. And in this e-mail -- and -- apologies, Andy 4 Moffat is a senior account executive at FICO 5 located in London, correct?</p> <p>6 A. That's what his address says, yes.</p> <p>7 Q. And in this e-mail, Mr. Moffat writes to Hamish at 8 Chubb and says, "Please see the attached proposal 9 for the licensing costs and associated training 10 for Decision Simulator. The prices are heavily 11 discounted in line with the existing Blaze 12 contract. No additional Blaze license(s) are 13 needed as it is covered within the overall global 14 Blaze ELA." Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. So based on this e-mail, would you conclude that 17 FICO believed that use of Blaze in Chubb Europe 18 was allowed under the license?</p> <p>19 A. No, I wouldn't conclude that.</p> <p>20 Q. And why is that?</p> <p>21 A. This is a sales guy, and there's just a layer of 22 people relying what other people think all the way 23 down the line, so I don't know if he's even looked 24 at the contract and he's not in a position to 25 judge anyway.</p> <p style="text-align: right;">Page 106</p>
<p>1 Q. And Decision Simulator, that's like an add-on 2 software to Blaze; is that correct?</p> <p>3 A. Honestly I don't know the answer to that. It's a 4 product. That's as much as I know.</p> <p>5 Q. But it's a separate product from Blaze?</p> <p>6 A. Yes.</p> <p>7 Q. And do you know whether Decision Simulator can 8 only be used in connection with Blaze?</p> <p>9 A. I don't know.</p> <p>10 Q. Showing you what's been attached -- what's been 11 previously marked as Exhibit 60, this is -- let me 12 know when you've had a chance to take a look at 13 it.</p> <p>14 A. Okay.</p> <p>15 Q. Have you seen this document before?</p> <p>16 A. No.</p> <p>17 Q. This is an exchange between -- well, let's look at 18 the second e-mail on Exhibit 60 which is an e-mail 19 from Andy Moffat to Hamish at Chubb, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And it's dated April 1, 2015, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And the e-mail we were looking at that's marked as 24 Exhibit 57 was dated March 26, 2015, correct?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 105</p>	<p>1 Q. If you look at the attachment to the e-mail, there 2 is a formal proposal attached, right?</p> <p>3 A. Yes, it says, "This document is FICO's proposal."</p> <p>4 Q. And he certainly would have needed approval from 5 higher-ups to make a proposal like this, correct?</p> <p>6 A. No. The system is automated where they're given 7 pricing, they have a pricing engine and then they 8 can discount based upon a certain amount of 9 parameters, so I can't tell any of that here, but 10 he could have definitely made a proposal on his 11 own.</p> <p>12 Q. And the proposal assumes that the Blaze Advisor 13 enterprise license applies to Chubb Europe, 14 correct?</p> <p>15 A. The asterisk says, "Assuming that Chubb have 16 already had Blaze Fundamentals and RMA training." 17 I don't see anything about underlying license.</p> <p>18 Q. Well, if you look at subpart B, Project 19 Requirements --</p> <p>20 A. Yes.</p> <p>21 Q. -- it says, "Decision Simulator to be included in 22 existing Blaze ELA contract."</p> <p>23 A. Uh-huh.</p> <p>24 Q. Do you see that?</p> <p>25 A. Uh-huh.</p> <p style="text-align: right;">Page 107</p>